

# NATIONAL ESTATE PLANNING AWARENESS WEEK

October 21-27, 2024, is National Estate Planning Awareness Week—a timely reminder to think about your estate plan. If you haven't yet created an estate plan, we have a handy guide to help you understand the basics. You can check it out here: [Estate Planning Guide](#).

If you already have an estate plan in place, now is a great time to review it to make sure it still aligns with your needs and goals. Changes in your personal circumstances, finances, or family dynamics can significantly impact your estate plan. Additionally, don't forget to check your beneficiary designations, as those play a crucial role in ensuring that your assets are distributed according to your plan.

As always, our **Estate and Business Succession Planning** team at O'Neil Cannon is here to assist you with any questions or concerns you may have. We can guide you through the process of creating an initial plan or help you review and update your current plan. Let's make sure your estate plan is not just a document in a drawer, but a reflection of your current intentions to preserve your legacy.

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## HARMONY OF LEGACY: A 12-DAY ESTATE PLANNING CELEBRATION (DAYS 9 TO 12)

To continue our holiday series "Harmony of Legacy: A 12-Day Estate Planning Celebration," we share with you the last days of Christmas. In case you missed the previous days you can find them here in [part 1](#) and [part 2](#).

### **Day 9: Nine Ladies Dancing = Gracefully Transferring Your Real Property at Death**

Similar to the elegant and harmonious nine dancing ladies, retitling your home into the name of your Revocable Trust ensures the smooth and graceful transition of your real property to your intended beneficiaries after your death. Your Trustee will have the ability to maintain, manage, and/or sell your home upon your death. If you fail to direct the transfer of your real property during your lifetime, or even at death, the property will likely pass through a probate proceeding before making it into your Revocable Trust. If you own real property outside of Wisconsin, you also risk needing an "ancillary probate" in that particular state in order to pass the property into your Revocable Trust. Failing to retitle your real estate can be a costly "misstep" in your overall estate plan.

## **Day 10: Ten Lords-a-Leaping = Succession Planning for Your Business**

Just as these lords leap into action, our business owners too must plan for the continuity of their business entity. More than likely, a business owner desires to transfer their business to their children. Although some business owners may not believe any planning is required, creating a [succession plan](#) for your business ensures a smooth transition of leadership, protection of business assets, and securing the prosperity of your business entity to the next generation. Effective planning now prevents potential disastrous results or depletion of assets after you have passed.

## **Day 11: Eleven Pipers Piping = Harmonizing Your Estate Plan with Estate Tax Avoidance Strategies**

Harmonize your estate plan with effective tax strategies to minimize your tax liabilities and leave more wealth for your beneficiaries and for future generations. Starting in 2024, the gift and estate tax exemptions will increase to \$13,610,000 (\$27,220,000 for married couples). This allows an individual or married couple to transfer significant assets during their lifetime or at death while potentially avoiding gift or estate tax. In addition, annual tax-free gifts to individuals will increase to \$18,000 per recipient from an individual (or \$36,000 from a married couple). Embrace the melody and stay in tune with these high exemption levels in your 2024 gift planning. Find out more in our article [Changes to Estate and Gift Tax Exemptions for 2024](#).

## **Day 12: Twelve Drummers Drumming = Celebrate and Review Your Estate Plan**

On the twelfth and final day of our “12 Days of Christmas” estate planning series, we encourage you to celebrate with the beat of a drum the completion of your comprehensive estate and succession plan. Take the time to review your estate plan regularly, ensuring it still aligns with your current wishes, as well as your current circumstances. Always try to communicate with your loved ones about your goals and wishes. Celebrate the peace of mind that comes from knowing your legacy is secure and make adjustments as needed to keep your plan in harmony with the rhythm of your life.

Happy Holidays from your [Estate and Business Succession Planning](#) team here at O’Neil Cannon. We wish you and your loved ones a safe and peaceful holiday season!

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# **HARMONY OF LEGACY: A 12-DAY ESTATE**

# PLANNING CELEBRATION (DAYS 5 TO 8)

To continue our holiday series “Harmony of Legacy: A 12-Day Estate Planning Celebration,” we share with you four more days. In case you missed our first few verses, you can find them [here](#).

## Day 5: Five Golden Rings = Jewelry and Prized Possessions

On the fifth day of Christmas, our attention turns to our favorite things. How to divvy up jewelry and other valuable possessions can lead to disputes among family members and beneficiaries. Wisconsin law permits you to have a separate, signed, and dated document in conjunction with your will or trust through which you leave particular items to specific individuals. But remember – Wisconsin does not permit [holographic wills](#), so do not try to leave things via this method without a complete estate plan.

## Day 6: Six Geese-a-Laying = Conserving Your Family’s Legacy

Six geese-a-laying bring forth the theme of legacy preservation on our sixth day. If you strategically lay the groundwork today, you can ensure a lasting impact on your family’s prosperity and values. To preserve your wealth for future generations, consider creating a dynasty trust, which allows for the precise distribution of wealth. The “generation-skipping transfer tax” or “GSTT” can devour a large portion of your wealth before reaching your grandchildren or great-grandchildren. A dynasty trust helps you avoid estate taxes by skipping generations when transferring assets. You can provide your grandchildren, and even great-grandchildren, with the assets necessary to achieve their dreams.

## Day 7: Seven Swans a Swimming = Durable Financial Powers of Attorney

Keep your financial affairs afloat with a Durable Financial Power of Attorney. This document provides protection during your lifetime if you are incapacitated and unable to make financial decisions. In a Durable Financial Power of Attorney, you appoint someone to be your agent to manage your financial affairs and act on your behalf. If you become incapacitated without a Durable Financial Power of Attorney, your family would have to go to court to have someone appointed to handle your affairs. Read more about the importance of a [Durable Financial Power of Attorney](#).

## Day 8: Eight Maids-a-Milking = A Moo-ving Guide to Health Care Powers of Attorney

As we explore the theme of giving on the eighth day, your Health Care Power of Attorney can play a vital role in ensuring your medical wishes are carried out, even if you cannot speak for yourself. Your HCPOA is an often overlooked yet crucial document. An HCPOA is a legal document in which you appoint a trusted individual as your “health care agent” to make

medical decisions on your behalf if you are unable to do so. Your health care agent can ensure your medical wishes are heard and respected. HCPOAs are also important for your young-adult family members.

Stay tuned for more valuable insights in the upcoming days as we continue our “12 Days of Christmas” estate planning series!

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## **HARMONY OF LEGACY: A 12-DAY ESTATE PLANNING CELEBRATION (DAYS 1 TO 4)**

### Day 1: A Partridge in a Pear Tree = The Foundation of Your Estate Plan

Welcome to our “12 Days of Christmas” Estate Planning Series. On the first day, let’s start with the basics of how to protect your family tree—or those outside your family tree—with the solid foundation of an estate plan. Whether you are single or married, with children or without, everyone should have an estate plan to assist with their affairs while living and to pass their assets upon their death. What type of plan you should have depends upon a variety of factors and will involve different legal documents. Find out more in our article [What is an Estate Plan?](#)

### Day 2: Two Turtle Doves = Planning for Couples

On the second day of Christmas, we focus on couples. People are often surprised to learn that Wisconsin does not recognize common law marriages. To protect a non-spousal partner, estate planning is essential. For married couples, Wisconsin is a community property state, which generally means that all debt and assets acquired or earned during marriage belong to both spouses, regardless of title. There are some exceptions and planning can be done before or after a marriage to protect assets for wealth management, divorce, and estate purposes. Our article [A Brief Overview of Wisconsin’s Marital Property System](#) provides additional information.

### Day 3: Three French Hens = Trusts

Three French hens symbolize trusts and protecting your nest egg for yourself and future generations. There are many types of trusts to cover varying needs. A revocable trust is the centerpiece of many estate plans and provides flexibility to provide for yourself and your loved ones. In the spirit of holiday giving, you may decide to include a [Charitable Remainder Trust](#) in your estate plan, or your estate plan may benefit from some specialized trusts such

as a Spousal Lifetime Access Trust or an Irrevocable Income Only Trust.

#### Day 4: Four Calling Birds = Wills

On the fourth day of Christmas, we address the best-known aspect of an estate plan: the will. Many estate plans use a “pour over will,” which calls out to the revocable trust and pours any estate assets into the trust. In other situations, a simple will without a trust may be all you need to distribute your assets. Regardless of the type of will, it must be properly created, and state laws differ on what is needed to create a valid will. Wisconsin law does not permit a “holographic will”—a will that is handwritten, signed, and dated by the person making it. Some states do permit such wills, but the recent [Aretha Franklin](#) case demonstrates the disputes that can arise from holographic wills.

Stay tuned for more valuable insights in the upcoming days as we continue our “12 Days of Christmas” estate planning series!

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## **TAX AND WEALTH ADVISOR ALERT: THE PITFALLS OF PAYABLE ON DEATH ACCOUNTS**

Payable on Death (POD) accounts are offered by banks and other financial institutions to permit an account owner to designate a beneficiary to receive the funds in a savings, checking, CD, or similar account, upon the account owner’s death. If there is a POD beneficiary on a joint account, the named beneficiary will receive the funds upon the death of the last account owner (see our previous article discussing the drawbacks of joint accounts [here](#)). Some financial institutions will allow the account owner to name multiple beneficiaries. A POD account is an easy way to transfer the account assets upon the account owner’s death: the beneficiary or beneficiaries can withdraw the funds by simply providing a death certificate, without a probate or other court proceeding.

While POD accounts offer a streamlined transfer of assets upon death, they limit planning opportunities for the account owner and may create unnecessary complications. The designation of a POD beneficiary assumes that the beneficiary will survive the account owner, which is not always the case. If a POD beneficiary on an account dies before the account owner and the beneficiary designation has not been changed, the default in Wisconsin law provides that under certain circumstances, the descendants of that POD beneficiary will inherit the account. Consider the example of Jane who designated her daughter Sue as the POD beneficiary on her bank account. If Sue predeceases Jane, upon Jane’s death, Sue’s children would be entitled to Jane’s bank account. Now assume that Jane designated her two

children as beneficiaries: Sue and John. If Sue predeceases Jane, Sue's share will still go to her children, unless John can prove in court that Jane intended that he receive the full account. Another complication is that under Wisconsin law, if Sue predeceases Jane, and John presents the bank with Jane and Sue's death certificates, the bank can pay the full account to John instead of paying half of the account balance to Sue's children. If this sounds confusing and contradictory, it is!

Another downside is that financial institutions can interpret POD provisions differently. You may set up accounts at different financial institutions that are not handled the same way upon your death. In some cases, the financial institution's interpretations may not withstand a legal challenge.

Additionally, a POD beneficiary is not required to pay your estate expenses, including funeral costs, from the account. This could create a hardship for your family or other loved ones if the POD beneficiary refuses to pay for your funeral or other final debts.

Finally, a will or trust does not override a POD designation, so it is essential to coordinate your POD designation with your estate plan. A POD naming your revocable trust does not have the risks discussed above and is often an important step in your estate planning. But if you create an estate plan and forget to change your POD designation, your POD designation will control the disposition of the assets in that account, regardless of what your will or trust states.

When it comes to estate planning, it is crucial to be aware of the potential pitfalls associated with POD accounts. In order to ensure your accounts and other assets are disbursed according to your wishes, contact our [Estate and Succession Planning Group](#). Additionally, if you have a dispute over the payment of POD accounts, our [Inheritance Litigation Group](#) can assist.

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## **HOME FOR THE HOLIDAYS: GIVE THE GIFT OF LEGAL PLANNING FOR YOUR COLLEGE STUDENT**

In the summer flurry of packing and planning to transition their high school student to college life, many parents overlook the legal documents that can help families in the event of a student's financial or health emergency. As many parents learn the hard way when their child suffers a physical or mental health crisis, the law generally prohibits a hospital or medical provider from sharing information about their adult child without their child's consent regardless of whether the child is covered under their health insurance or a dependent for

tax purposes. Similarly, while parents can deposit money into their child's checking account, they do not have the ability to act on their adult child's behalf to manage other aspects of his or her financial life. A few simple documents can help families as their teens transition to adulthood.

### **HIPAA Release and Authorization**

HIPAA normally prohibits a medical provider from giving information about a patient to anyone without the patient's consent. A HIPAA release and authorization allows medical professionals to divulge medical records to an individual's personal representative under HIPAA. Students can name one or both of their parents as individuals authorized to obtain such information.

### **Power of Attorney for Health Care**

A power of attorney for health care allows a person to appoint someone to make health care decisions for them if they are unable to do so. The power of attorney does not override or supplant the individual's wishes; it becomes effective only when (i) two physicians or (ii) a physician and a psychologist, nurse practitioner, or physician assistant determine that the individual is incapacitated. Only one person can be given power of attorney for health care at a time and that person should be aware of the individual's desires and beliefs concerning treatment.

### **Durable Power of Attorney**

A durable power of attorney allows a person to appoint someone to oversee their financial affairs. These powers can be either immediate or effective only in the event of incompetence. For a college student, an immediate durable power of attorney would permit his or her parent to act on the student's financial behalf to the extent the power permits. This power can be broad and cover all accounts, including brokerage institutions, credit cards or banks, or limited to a specific financial institution.

O'Neil Cannon's **Estate and Succession Planning Group** can advise and assist your college student with these important documents.

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## **TAX AND WEALTH ADVISOR ALERT: HOW DOES LIFE INSURANCE WORK WITH AN ESTATE PLAN?**

We must always expect the unexpected. We can be careful and prudent in our daily lives, but

there are certain things that are out of our control, like death. In the event of your untimely death, are you able to provide ongoing support to your loved ones and important causes? By securing life insurance and establishing a comprehensive estate plan, you can help protect your family and loved ones and support your charitable causes after your death.

## **What is Life Insurance?**

Life insurance is a contract with an insurance company that provides a sum of money to a designated person or entity upon the death of the insured person. Some policies also contain provisions that permit a payout upon a specific event, such as a terminal or critical illness. Buying life insurance is a common way for people to plan for the future of their families, loved ones, businesses, or other causes. It is important to understand what type of life insurance suits your needs.

## **What are the Different Types of Life Insurance?**

There are two main types of life insurance that an individual can purchase: term life insurance and permanent life insurance.

- Term life insurance - This type of life insurance provides a death benefit upon the death of the covered insured during a specific, fixed period, often 1 to 30 years. The policy will pay out benefits to the designated beneficiary if the insured dies during the policy's term. Term life insurance is often purchased by individuals who want coverage for specific reasons in the event of their death, such as taking care of minor children or paying off a mortgage. Term life insurance is more affordable than permanent life insurance, as it only offers benefits for the term of the policy. If you have a small estate that is simple to manage, then term life insurance might be your best option.
- Permanent life insurance - This type of insurance provides a death benefit upon the death of the covered insured and a cash value that the covered insured may be able to access during their life. Common forms of permanent life insurance are whole life, universal life, variable life, and variable universal life insurance. Permanent life insurance is commonly purchased by individuals who have large estates that are complex to manage. While permanent life insurance is more expensive than term life insurance, its potential benefits can be much greater. If you have a special-need heir, large assets that are difficult to divide, or high estate taxes that will burden the beneficiary, then permanent life insurance might be your best option.

For both types of insurance, it is important to pay the premiums. With term life insurance, the policy typically lapses if you fail to pay a premium and your beneficiaries will obtain no benefit upon your death. With permanent life insurance, the contract may provide different choices if you fail to pay the premiums.

Make sure to work with an experienced estate planning attorney and your insurance agent to evaluate your situation and determine what type and level of insurance are best for you and

your loved ones. Your current decisions can benefit future generations if you plan appropriately.

### **What are the Most Common Benefits of Having Life Insurance?**

There are several important benefits that can be realized with the appropriate type and level of life insurance. Some of the most common benefits of life insurance include:

- Taking care of loved ones
- Maximizing wealth
- Paying off mortgages or other debts
- Securing a long-term legacy
- Protecting a business long-term
- Putting wealth into important causes
- Leaving a gift to charity

It is important to secure a policy that meets your long-term goals. Make sure you consider your choices so your plan is the best fit for you.

### **What is an Estate Plan?**

Estate planning is the process of thinking about what will happen to your money, property, and other possessions after you die. Estate planning can determine how your affairs will be handled in the event that you become unable to care for yourself. Estate planning may also include planning for the long-term succession of a business. A goal of estate planning often is to minimize the amount of taxes and other expenses that arise upon death. Your personal goals and wishes should drive the type of estate plan you create. There are different mechanisms to develop a comprehensive estate plan, which can include:

- Will
- Trusts
- Powers of appointment
- Determination of property ownership and retitling of property
- Gifts
- Powers of attorney

A comprehensive estate plan should be tailored to your needs and your desires and should not be a cookie-cutter form document.

### **How Can Life Insurance Work with an Estate Plan?**

The appropriate life insurance policy can be a significant part of your estate plan. Often, individuals simply designate a family member as the beneficiary of a life insurance policy without considering their overall estate planning goals. This can result in unintended consequences such as unequal distribution to beneficiaries or tax implications. Designating

the right beneficiary on any insurance policy is important to achieve your estate planning goals.